

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GERALD CASH, et al., :
Plaintiffs, :
vs. : CASE NO.
HAMILTON COUNTY DEPARTMENT of : C-1-01-753
ADULT PROBATION, et al., :
Defendants. :

Deposition of: PHILLIP R. GARCIA
Taken: By the Defendants
Pursuant to Agreement
Date: March 30, 2006
Time: Commencing at 11:01 a.m.
Place: Law Office of Stephen Felson
817 Vine Street
Suite 1401
Cincinnati, Ohio 45202
Before: S. Diane Farrell, RMR, CRR
Notary Public - State of Ohio

1 APPEARANCES:

2 On behalf of the plaintiffs:

3 Robert Newman, Esq.
4 and
5 Stephen Felson, Esq.
6 817 Vine Street
7 Suite 1401
8 Cincinnati, Ohio 45202

9 On behalf of Hamilton County:

10 David Stevenson, Esq.
11 of
12 Office of Hamilton County
13 Prosecuting Attorney
14 230 East Ninth Street
15 Suite 4000
16 Cincinnati, Ohio 45202

17 On behalf of the City of Cincinnati:

18 Richard Ganulin, Esq.
19 City of Cincinnati Law Department
20 801 Plum Street
21 Room 214
22 Cincinnati, Ohio 45202

23 Also Present:

24 Gregory Wahoff

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1 PHILLIP R. GARCIA
2 of lawful age, a plaintiff herein, being first duly
3 sworn as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. GANULIN:

7 Q. Please state your name.

8 A. Phillip Ray Garcia.

9 Q. And, Mr. Garcia, you are one of the
10 plaintiffs in this lawsuit?

11 A. Yes, sir.

12 Q. Okay. And where are you staying now?

13 A. Tender Mercies.

14 Q. How long have you been there?

15 A. About 2 1/2 years now.

16 Q. Okay. And you just sat through the
17 testimony of --

18 A. Yes.

19 Q. -- the prior witness?

20 A. Yes.

21 Q. One of the allegations in your lawsuit,
22 Mr. Garcia, is that the defendants acted in
23 accordance with a policy and practice adopted by them
24 of confiscating property of homeless persons without
25 notice or opportunity for due process of law in order

1 to discourage those persons from living at the
2 locations described above.

3 A. Yes, sir.

4 Q. Do you understand that one of the
5 defendants in the lawsuit is the City of Cincinnati?

6 A. Yes.

7 Q. What do you know of the City of
8 Cincinnati's alleged policy or practice of
9 confiscating property of homeless persons without
10 notice?

11 A. Well, they wouldn't never give us no
12 warnings. You know, they'd just come up and say, you
13 need a bag or two, you know, put the garbage in and
14 that's what we would do.

15 Q. Who is "they" would come?

16 A. The City or the people that work with the
17 City, you know, in the small trucks, picking up along
18 the side of the roads. They gave us trash bags.

19 Q. Just so we're clear, when you say the City
20 of Cincinnati --

21 A. Yeah.

22 Q. -- you mean sanitation workers?

23 A. Yeah, yeah, when they come by.

24 Q. Okay. Just so you know, I have to finish
25 my question --

1 A. Oh, okay. Sorry.

2 Q. -- because she can't record us both at the
3 same time.

4 A. Sorry, sorry.

5 Q. The individuals you're speaking about are
6 individual sanitation workers who drive the
7 sanitation trucks, is that correct?

8 A. Yes.

9 Q. And was it your testimony that those
10 individual sanitation workers would stop at a camp of
11 yours and give you trash bags?

12 A. Yes.

13 Q. And what would they say when they gave you
14 the trash bags?

15 A. They said as long as it was cleaned up,
16 nobody would bother you, and we'll come by and get
17 it, sit it down by the -- you know, down the rocks by
18 the rail there and we'll come get it.

19 Q. So they gave you the empty trash bags, and
20 after you filled them with trash, they would come
21 back and get them?

22 A. Yes, sir.

23 (Mr. Felson entered the room.)

24 Q. Okay. My question, though, is, is there
25 anything else you know connected to the City of

1 Cincinnati besides your contact with the sanitation
2 workers that relates to the allegation that the City
3 of Cincinnati had a policy and practice of
4 confiscating property of homeless persons without
5 notice?

6 A. No.

7 Q. Do you agree with the prior witness that
8 camping under the bridges is trespassing?

9 A. Yes.

10 Q. So if the individual sanitation workers
11 for the City would leave trash bags for you to
12 dispose of trash and they would come back and get the
13 trash, then who came on October 28th, 2001 to the
14 Sixth Street Bridge at Gest Street?

15 MR. STEVENSON: I'm sorry, September.

16 Q. I'm sorry, September 28th, 2001.

17 A. By UPS?

18 Q. Well, the Sixth Street Bridge at Gest
19 Street.

20 A. Yeah, yeah, okay. Well, I wasn't there.
21 I was at -- well, I left my camp about 10:30, to
22 apply at a sign downtown. Upon return to the camp at
23 2:30 p.m., my dog, Homey, was gone. There was a
24 Cincinnati Police Officer under the bridge
25 investigating a car wreck. Upon seeing me --

1 Q. Did you say, investigating a car wreck?

2 A. Yes.

3 Q. Okay. I'm sorry.

4 A. Upon seeing me, he had told me that the
5 dog had been taken to the SPCA. My friend called the
6 SPCA, was told the dog would be put to sleep Friday
7 if not claimed and she then went and got the dog.
8 The police officer I saw under the bridge did not
9 tell me that it was illegal to be under the bridge,
10 that I had to move or that my belongings would be
11 taken.

12 Q. So is this on September 28th --

13 A. Yes.

14 Q. -- 2001, a policeman, Cincinnati Policeman
15 who was investigating a wreck --

16 A. Yes.

17 Q. -- a car wreck, told you that you should
18 move your belongings?

19 A. Yes.

20 Q. And did you move your belongings?

21 A. Well, no, because I really didn't, you
22 know, think nothing about it because there were no
23 notice or nothing that I -- there wasn't a note.

24 Q. But in the lawsuit you allege that on
25 September 28th, 2001 Community Service participants

1 took property?

2 A. Yeah, that's what he told me, the SPCA
3 come and got the dog.

4 Q. Okay. The SPCA took the --

5 A. The dog.

6 Q. -- your friend's dog?

7 A. My dog.

8 Q. I'm sorry, your dog.

9 A. It was my dog.

10 Q. And you got the dog back?

11 A. Yeah, I had to go on the SPCA and get it.

12 Q. Okay. But when the policeman was there
13 investigating the car wreck, your property was still
14 there?

15 A. Yeah.

16 Q. Then who took your property?

17 A. I don't know.

18 Q. When was it taken?

19 A. It was taken after I left. And I come
20 back.

21 Q. Oh, after you left to go get your dog?

22 A. Yeah. When I come back, it was gone.

23 Q. So you don't even know who took it?

24 A. No, because they didn't leave no notice or
25 nothing. And it was -- I mean, I had kept it as

1 clean as this. There was no rocks, no nothing. The
2 dog was on a leash, the dog had dog food, water,
3 everything.

4 Q. Okay. Did you check to find your
5 property? Did you call anybody?

6 A. At the time I didn't know where to go
7 because I was so oriented (sic), couldn't think. I
8 was just upset.

9 Q. Okay. I see just before you read a
10 statement that's in front of you, is that correct?

11 A. Yes.

12 Q. So you know how to read?

13 A. Yeah. Well, yes.

14 Q. And do you also read newspapers like the
15 prior witness?

16 A. Sometimes.

17 Q. You understand that in newspapers they
18 have legal notices sometimes?

19 A. (Nodding head.)

20 Q. You have to answer out loud.

21 A. Yes.

22 Q. Like for sales of property --

23 A. Right.

24 Q. -- and things like that. You're aware of
25 that?

1 A. Yes.

2 Q. Other than Cincinnati sanitation workers
3 dropping trash bags for you to use at camps and the
4 Cincinnati Police Officer who was investigating the
5 car wreck who told you that your dog was at the SPCA,
6 have you had any other contact with the City of
7 Cincinnati employees as it relates to your
8 allegations in this lawsuit?

9 A. Yes, I was up there by the Sunoco, down by
10 the convention center.

11 Q. A Sunoco gas station?

12 A. Yeah. Well, down by the convention center
13 right there, about a couple of blocks from we was at
14 in the woods. And I was at a friend of mine's house.
15 They had just -- it was cold outside, very cold.

16 Q. When is this?

17 A. Back 2000 -- I think around 2000. But I
18 had come back and all of my stuff was gone, all of
19 it, blankets, everything.

20 Q. Just so we're clear, when are you talking
21 about and where are you talking about, and what are
22 you talking about?

23 A. About the same thing, they come and swept
24 without me not even knowing they'd been there.
25 They'd sweep.

1 Q. Are you talking about another camp?

2 A. Yes, that I had prior to that.

3 Q. And who took your property from that?

4 A. I assume the City or whatever. They
5 didn't leave no note, no nothing, no notice that they
6 were there.

7 Q. Why do you assume the City?

8 A. Because it was clean. There was nothing
9 there. No bottles, no grass, no nothing.

10 Q. This was on property where you were
11 trespassing again?

12 A. Yeah, but there wasn't nothing. It wasn't
13 there.

14 Q. How do you know it wasn't state of Ohio
15 property?

16 A. (Witness shrugged.)

17 Q. Do you know if it was state of Ohio
18 property?

19 A. They never did really explain the
20 situation. They never did.

21 Q. Do you know if it was Hamilton County
22 property?

23 A. No.

24 Q. Okay. Is there any basis for you to say
25 that City of Cincinnati sanitation workers cleaned

1 this site that you're talking about?

2 A. Because I see a lot of trucks going by all
3 the time, a lot of workers.

4 Q. You are talking about sanitation workers?

5 A. Yeah.

6 Q. But anywhere around the City there's
7 always a lot of sanitation workers --

8 A. Yeah.

9 Q. -- aren't there?

10 A. Yeah, but a lot of them just don't stop in
11 front of you in an orange truck.

12 Q. Well, did you see --

13 A. Yeah. And some of them had white cars.

14 Q. Did you see workers in a City sanitation
15 truck clean out this site you're talking about?

16 A. No.

17 Q. Did you ever complain to any City of
18 Cincinnati officials about City employees taking your
19 property?

20 A. I didn't know who to go to. I mean, you
21 know, like he said, you go try to talk to somebody,
22 they give you the wrong answer, like, we don't know,
23 or send you somewhere else.

24 Q. My question is, did you ever complain to a
25 City official about City employees taking your

1 property?

2 A. (Shaking head.)

3 Q. You have to answer out loud.

4 A. Not really.

5 Q. At the camp on September 28th, 2001, under
6 the Sixth Street bridge, who else was staying there?

7 A. Me, just myself.

8 Q. You were there by yourself?

9 A. Yes.

10 Q. With your dog?

11 A. Yes.

12 Q. Was there trash there from other people
13 who had stayed there before?

14 A. No. There was just rocks. I cleaned it
15 up.

16 Q. Did you have bags of trash there?

17 A. No, I took them to the Dumpster.

18 Q. Where did you use the bathroom if you had
19 to?

20 A. Up in the woods there.

21 Q. Can you describe what your camp looked
22 like under the Sixth Street Bridge?

23 A. I had a tent over here, I had my chair and
24 a table, behind my tent I had all my clothes. I had
25 my leash, you know, where my dog run around a little

1 bit, you know, enough room. And then I had carpet
2 where it was nice and clean. I mean, you could walk
3 on it bare footed.

4 Q. You allege in the lawsuit that Community
5 Service participants took possession of your items on
6 September 28th under the Sixth Street bridge.

7 A. Yes.

8 Q. But I thought you said you weren't there,
9 and don't know who took your property.

10 A. Well, I assumed it was because -- like I
11 said, because it was clean.

12 Q. But what -- why did you assume it was
13 Community Service participants? Well, first of all,
14 let me ask, do you know what Community Service
15 participants are as it's used in this lawsuit of
16 yours?

17 A. Yeah, they go around help cleaning,
18 community service for -- I say, stay out of jail.

19 Q. Okay. And they work for the Hamilton
20 County?

21 A. Yes.

22 Q. And tell me why you assume that Community
23 Service participants cleaned up your property?

24 A. Because with all the stuff they were
25 needing help. See, they was needed help, you know,

1 putting the trash in the Dumpster.

2 Q. Besides the -- maybe I'm repeating myself.
3 Besides the Cincinnati Police Officer you spoke to
4 who was investigating the car wreck, did you speak to
5 any other Cincinnati Police Officers?

6 A. No.

7 Q. You heard the prior witness testify about
8 some of the cans and bottles and some of the trash
9 that exists at some camps?

10 A. (Nodding head.)

11 Q. You have to answer out loud.

12 A. Yes.

13 Q. Have you experienced that yourself? Have
14 you seen some trash that accumulates at camps?

15 A. Yeah.

16 Q. Have you seen some camps where maybe
17 people don't go out into the woods to use the
18 restroom?

19 A. Yes.

20 Q. Some camps can be pretty dirty?

21 A. Yes.

22 Q. Pretty unhealthy?

23 A. Yeah.

24 Q. You don't blame public officials for
25 wanting to clean up places that -- to the extent

1 they're dirty or unhealthy?

2 A. Well, to an extent but somebody that's
3 cleaning up, that's got a place like I had, I don't
4 think that's right.

5 Q. Yes. And I'm not asking -- I do
6 understand you filed a whole lawsuit --

7 A. Right.

8 Q. -- to challenge what was done to your
9 property. I'm just asking you about the camps
10 where --

11 A. Yeah, I've seen some that -- oh, sorry.

12 Q. No. I'm asking you about those camps
13 where there's trash and where they might be
14 unsanitary. You don't object to those being cleaned
15 up, I assume?

16 A. No.

17 MR. GANULIN: I don't have anything else.

18 CROSS-EXAMINATION

19 BY MR. STEVENSON:

20 Q. Mr. Garcia, did you ever go to the
21 Cincinnati Police property room to locate your
22 property?

23 A. No, sir.

24 MR. STEVENSON: All right. I don't have
25 anything further.

1 MR. NEWMAN: Just a couple of questions.

2 EXAMINATION

3 BY MR. NEWMAN:

4 Q. Mr. Garcia, how many times have you been
5 swept?

6 A. That I know of, about twice.

7 Q. And there's the one in the lawsuit and
8 then another one?

9 A. Yeah.

10 Q. Was the other one before the one in the
11 lawsuit or after?

12 A. That was the one before.

13 Q. The one before. Tell us about the one
14 before.

15 A. Okay. I was -- let's see, where I was
16 coming at. Let me think. Hmm. My mind went blank.

17 Q. Well, I wanted to ask you, do you remember
18 where it was?

19 A. By Sunoco, the bridge by the Sunoco. I
20 think it was the same place where I stayed at by the
21 woods.

22 Q. By the woods. Now, you said --

23 A. Yeah, right there, right across, where we
24 lived -- across.

25 Q. Uh-huh.

1 A. That's when I stayed there. And they come
2 and got all my blankets.

3 Q. Can you name a street near there?

4 A. No, I can't. I'm bad on names of streets.

5 Q. Okay. But you say it was by the Sunoco?

6 A. Yeah.

7 Q. Okay. And how much before the sweep in
8 the lawsuit was this other sweep by the Sunoco? Was
9 it months or was it more than --

10 A. More than a month.

11 Q. More than months?

12 A. Yeah.

13 Q. Was it like a year before?

14 A. About a year.

15 Q. About a year before, okay. What else can
16 you tell us about that sweep about a year before by
17 the Sunoco?

18 A. Well, I said, I was coming down from a
19 friend's house, and it was very cold. I thought,
20 well, I'm going to go lay down.

21 Q. So it was in the wintertime?

22 A. Yes.

23 Q. Uh-huh. Were you camping by yourself?

24 A. Yeah. I always camp by myself.

25 Q. Did you have Homey with you?

1 A. Yes.

2 Q. Okay. And did you have a tent?

3 A. No. Then I had blankets and laid on a
4 mattress, you know, to keep off the ground.

5 Q. Okay. And when -- when the stuff was
6 swept away, what stuff did you lose?

7 A. Blankets, clothing, you know, about
8 everything there.

9 Q. About everything?

10 A. Because I had to go to the Drop-Inn.

11 Q. Okay. And you say Homey was with you?

12 A. Yeah, but I took her back to a friend of
13 mine's house because it was cold. I couldn't keep
14 her at the Drop-Inn.

15 Q. Okay. But I mean they didn't take Homey
16 in that other sweep?

17 A. No, no, not that one.

18 Q. Okay. And did you see who did the sweep
19 then?

20 A. (Shaking head.)

21 Q. You have to answer out loud.

22 A. Oh, no.

23 Q. Okay. Was there any kind of note or
24 notice before -- that they put up before they did the
25 sweep?

1 A. No.

2 Q. Okay. Did anybody come after the sweep
3 and tell you where your stuff was?

4 A. No.

5 Q. No. Did you tell anybody about this
6 sweep? Did you complain to anybody about the sweep,
7 anybody at the Homeless Coalition?

8 A. Yeah, that's when I went -- you know, I
9 went to the Drop-Inn and complained to them. That's
10 when they said to go.

11 MR. GANULIN: Are you talking about the
12 Drop-Inn? Is that what you said?

13 THE WITNESS: Yeah.

14 A. And that's when they suggested, you know,
15 I go to Legal Aid.

16 MR. GANULIN: That's the Drop Inn shelter?

17 THE WITNESS: Yeah.

18 Q. Okay. And since -- since you didn't see
19 the sweep take place, right --

20 A. Right.

21 Q. -- you're not sure who did the sweep?

22 A. Right.

23 Q. Okay. Could you describe the site, your
24 camp, after the sweep?

25 A. Clean.

1 Q. Clean. Uh-huh, okay. So you said you
2 lost sleeping bags and clothing?

3 A. Yes.

4 Q. Can you remember what else, if there was
5 anything else?

6 A. Dog food.

7 Q. I'm sorry, food?

8 A. Dog food for the dog.

9 Q. Dog food for the dog?

10 A. Yes.

11 Q. Uh-huh. Did you have a bowl for the
12 dog?

13 A. No, not really. I just put it -- well,
14 you know, whatever, you know, was clean.

15 Q. Okay. Did you have any of your own food
16 there at the site?

17 A. No.

18 Q. Okay. Did you have any books or any --
19 any radios or any other stuff?

20 A. No. Mainly I carried the radio stuff with
21 me that time.

22 Q. So it was mainly clothing and sleeping
23 materials?

24 A. Yes.

25 MR. NEWMAN: Okay. That's all I have.

1 MR. GANULIN: That's all. Thank you.
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PHILLIP R. GARCIA

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7 DEPOSITION CONCLUDED AT 11:21 A.M.

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C E R T I F I C A T E

2 STATE OF OHIO :
3 COUNTY OF HAMILTON : SS

I, S. Diane Farrell, RMR, CRR, the
undersigned, a duly qualified and commissioned notary
public within and for the State of Ohio, do hereby
certify that before the giving of his aforesaid
deposition, PHILLIP GARCIA was by me first duly sworn
to depose the truth, the whole truth and nothing but
the truth; that the foregoing is the deposition given
at said time and place by PHILLIP GARCIA; that said
deposition was taken in all respects pursuant to
stipulations of counsel; that I am neither a relative
of nor employee of any of the parties or their
counsel, and have no interest whatever in the result
of the action; that I am not, nor is the court
reporting firm with which I am affiliated, under a
contract as defined in Civil Rule 28(D).

19 IN WITNESS WHEREOF, I hereunto set my hand and
20 official seal of office at Cincinnati, Ohio, this
21 day of , 2006.

24 My commission expires: S. Diane Farrell, RMR, CRR
October 18, 2006. Notary Public - State of Ohio